

Keyword advertising and Google's trademark policy

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How keywords work

- Users enter queries into search engines
- Advertisers select keywords
- Keywords trigger the ads





Guaranteed Lowest Rates

Web

www.americanexpress.com/travel Lowest hotel rates available. Double Membership Rewards® points.

Priceline Discount Hotels

www.priceline.com The All New Priceline Now Lets You Shop and Compare Before You Buy!

hotels.com - The best prices at the best places. Guaranteed.

Find the Lowest Hotel Rates Guaranteed! From Luxury Hotels to Budget Accommodations.

Hotels. Com has the Best Deals and Discounts for Hotel Rooms Anywhere.

www.hotels.com/ - 90k - Aug 3, 2005 - Cached - Similar pages

Hotels (uk) - Hotels - Condos, Suites, Bed & Breakfast

Search Hotels by Address

More results from www.hotels.com »

hotels, travel, discount hotels - reservations and lodgings

Hotels and hotel reservations by All-Hotels, travel, lodgings and discount hotels worldwide. Instant reservations at 80000 hotels in 10000 locations.

www.all-hotels.com/ - 47k - Aug 3, 2005 - Cached - Similar pages

Hilton Hotels Home

Hilton **Hotels** online reservations for leisure and business travel at leading airport, resort, and business **hotels** worldwide.

www.hilton.com/ - 67k - Aug 3, 2005 - Cached - Similar pages

Hotels Rooms, Accommodations, Discounted Hotel Rates, Motels ...

Book reservations on-line at Comfort, Quality, Clarion, Sleep, Rodeway, EconoLodge and MainStay Suite **hotels** worldwide.

...... Marie Lead Lead 1411 Cooked Challenger

Sponsored Links

Hotels

Results 1 - 10 of about 98,000,000 for hotels [definition]. (0.07 seconds)

ORBITZ: The Faster, Easier Way to Find the Hotel You Want! www.ORBITZ.com

Sponsored Links

Find the Hotels You Want

Hotel Photos, Info & Virtual Tours Save up to 50% on **hotels** at Expedia www.Expedia.com

Hotels

Low Rates Guaranteed! Compare Prices, View Photos & Book Online www.hotels.com

Hotels

Search Our **Hotels** Now & Save Big-With CheapTickets, It's Simple! www.CheapTickets.com

Hotels

Find Low Rates, Nearby Attractions & Dining, Hotel Pics, Maps & Morel www.Travelocity.com

Hotels



The term entered in the box is the query



 Where the query matches a keyword selected by the advertiser, the ad can appear



Sponsored Links

Find the Hotels You Want

Hotel Photos, Info & Virtual Tours Save up to 50% on **hotels** at Expedia www.Expedia.com

Hotels

Low Rates Guaranteed! Compare Prices, View Photos & Book Online www.hotels.com

Hotels

Search Our **Hotels** Now & Save Big-With CheapTickets, It's Simple! www.CheapTickets.com

Hotels

Find Low Rates, Nearby Attractions & Dining, Hotel Pics, Maps & More! www.Travelocity.com

<u>Hotels</u>

110% Lowest Price Guaranteed Discount Rates at 29,000 **hotels** www.Lodging.com

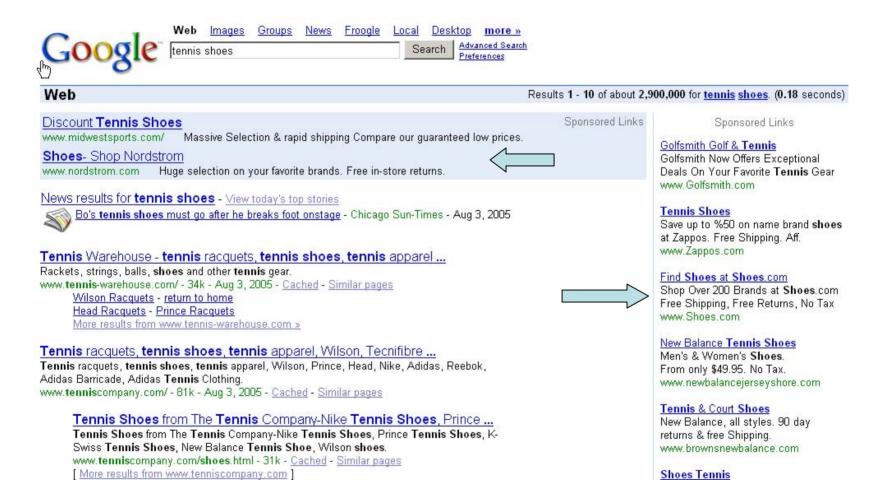
Keyword matching options

- Exact match
- Phrase match
- Broad match
- Negative keyword



Type of matching selected	Will match these queries	Won't match these queries
Exact match KW=shoes	shoes	Tennis shoes Shoe
Broad match KW=shoes	Shoes Tennis shoes Nike shoes	Tennis
Phrase match KW=red shoes	Red shoes	Shoes red Red tennis shoes
Negative keywords KW=shoes -Nike	Shoes Tennis shoes Adidas shoes	Nike shoes

Examples – broad match





Nike Shoes - Eastbay com Shop for brand name Nike shoes online at Eastbay.com

Nike.com

Web

Apparel, shoes and accessories. www.nike.com/ - 5k - Cached - Similar pages

Nike.com

www.eastbay.com

www.nike.com/main.html - 5k - Aug 3, 2005 - Cached - Similar pages [More results from www.nike.com]

Amazon.com Apparel: Nike

Find, shop for and buy Mens, Womens, and Childrens Apparel, Shoes & Accessories at ... Trail Blazers Nike Men's NBA Personalized Authentic Home Jersey ... www.amazon.com/gp/search.html? encoding=UTF8&node=1036682&brand=Nike - 52k - Aug 3, 2005 - Cached - Similar pages

Nike Shoes Jordan Shoes Basketball Shoes from Nike Retro Shoes ...

Nike Shoes Jordan Shoes and Nike Basketball Shoes WWE Diva Stacy Keibler A wide selection of Nike basketball shoes and Jordan shoes from running shoes to ... www.instyleshoes.com/ - 44k - Aug 3, 2005 - Cached - Similar pages

Nike Shoes Air Max 95

Nike Shoes and Jordan Shoes A wide selection of Nike and Jordan shoes from Jordan Retro XI to Flightposite KG Olympic to Air Max 95. A Nike board to discuss ...

Sponsored Link

Sponsored Links

athletic shoes

Results 1 - 10 of about 3,380,000 for nike shoes. (0.10 seconds)

Nike, adidas, timberland, qucci prada, Luie Vuitton, puma shoes www.flyskyshoes.com

Nike Shoes

Huge Selection of Nike Footwear. Up to 70% Off on Select Styles! www.FinishLine.com

Nike Shoes

Bargain Prices. You want it, we got it! Shopzilla.com

Nike Air Force Ones - \$80

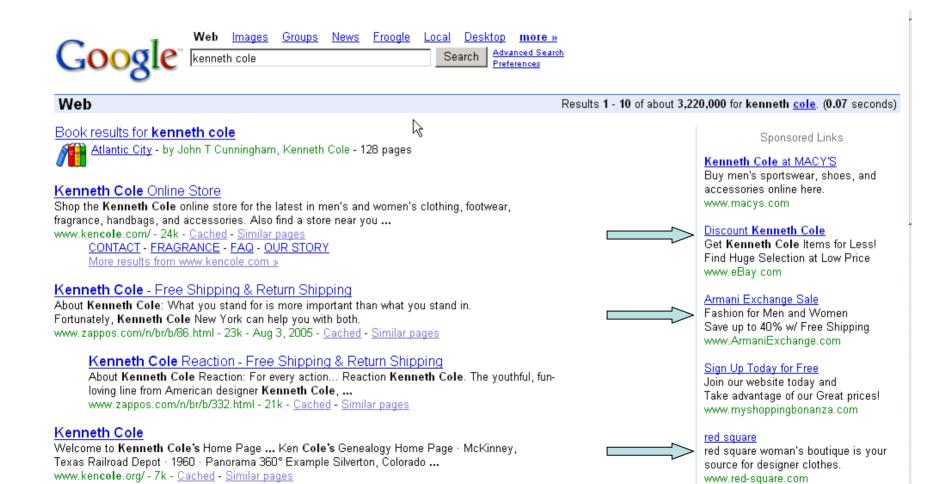
Nike Air Jordans, Air Dunks, Bape's Mid, Low, Custom Colors/Styles, AF1 www.ChampKicks.com



Discount Soccer Shoes

Name Brands, Low Prices On Cleats Indoor, Training, Turf & Leisure www.BigToe.com/

Why is this a trademark issue?



\$\$ Kenneth Cole Coupons & KennethCole com Coupon Codes

Why is this a trademark issue?

- Trademark owners do not like to see competitors' advertisements appear
- Some trademark owners object to resellers using the mark as a keyword
- Some trademark owners do not allow franchisees or affiliates to use the mark to advertise in competition to the trademark owner



Google's trademark policy – general principles

- Google provides advertising space; it does not "sell keywords"
- Advertisers are responsible for their choice of ad text and keyword triggers
- Google created TM complaint procedure to try to balance the interests of TM owners, advertisers, internet users



Google's policy

- Upon receipt of a <u>reasonable</u> complaint from a trademark owner,
- Google will conduct a limited investigation,
- US/Canada: and disable use of the term in ad text
- Outside US/Can: and disable keywords and/or ad text



US Cases – Mark Lemley

Three issues:

- (1) Trademark use
- (2) Consumer confusion
- (3) Contributory infringement

Keyword Cases in Europe

France

Google France v. Viaticum/Luteciel (Versailles Court of Appeal, March 10, 2005)

- Marks were "used" to allow display of competitor's ads
- Each "use" was a "reproduction" of the mark; no need to establish likelihood of confusion
- Google was aiding and abetting advertisers to commit trademark infringement
- Google must prevent use of keywords which are
 - Manifestly illegal
 - Infringing well-known trademarks
 - Infringing on trademarks Google has knowledge of

Currently on appeal to French Supreme Court

Germany

Nemetschek v. Google (District Court of Munich, 2003)

- Search engine not liable for direct or indirect trademark infringement
- German Teleservices Act provides liability only if search engine has acquired knowledge of the illegality of the use of particular keywords and it is technically possible and reasonable for the search engine to prevent such use

Germany

Metaspinner v. Google (District Court of Hamburg, 2004)

- Metaspinner obtained PI re a single ad
- Metaspinner alleged Google violated the injunction because other ads appeared
- Court: If the mark is not in the ad text, there is no trademark use or unfair competition
- Notice of one third party's misuse of a mark in an ad is not notice that other third parties' use of that mark would be wrongful
- On appeal

Austria

- Longevity Health v. Google (Commercial Court of Vienna, prelim. inj., 4/13/05)
- Preliminary injunction dismissed
- No trademark infringement
- No unfair competition
- Longevity has appealed the denial of preliminary injunction

UK

- Reed Executive v. Reed Business Information (UK Court of Appeal – March 2004)
 - For similar marks, use of metatags and keywords unlikely to be confusing if there is no confusing material in the resulting web sites, search results or advertising
 - Court didn't rule on whether the decision would be the same for identical marks (2 different statutory provisions apply to similar marks and identical marks)
 - Nothing about the position of search engines or other service providers